IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2007

CORAM

THE HON'BLE MR. JUSTICE S.J. MUKHOPADHAYA
&
THE HON'BLE MR. JUSTICE V. DHANAPALAN

O.S.A. Nos.342 & 343 of 2001

The Bank of Tokyo
Mitsubishi Limited
Mumbai ..Appellant in both the O.S.As./2nd Defendant

Vs.

1 M/S.Spartex Ceramics India Limited
52, Chamiers Road
Chennai - 600 028

2 M/S.Sparts Holdings Limited
52, Chamiers Road
Chennai - 600 028

3 M/S.Klen & Marshalls Manufacturers &
Exporters Pvt. Limited
12, Neelakanda Mehta Street
T. Nagar, Chennai - 600 017 ..Respondents in both the O.S.As.
(Plaintiffs 1 & 2 and 1st Defendant)

Original Side Appeals filed under Order XXXVI Rule 11 of the Original Side Rules challenging the fair and decretal order of a learned Single Judge of this Court dated 20.07.2001 in O.A. No.42 of 2000 and Application No.280 of 2000 respectively in C.S. No.750 of 1999 in the ordinary original civil jurisdiction of this Court.

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| For appellants in both the appeals | Mr. C. Mohan for M/s. King & Partridge |
| For RR 1 & 2 in both the appeals | Mr. R. Murari |
| For R3 in both the appeals | No appearance |

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COMMON JUDGMENT

V. DHANAPALAN, J.

The Bank of Tokyo Mitsubishi Limited, Mumbai which has been impleaded as second defendant in C.S. No.750 of 1999, has preferred the present Appeals against the interim orders made by a learned Single Judge of this Court in O.A. No.42 of 2000 and Appln. No.280 of 2000 in C.S. 750 of 1999.

2. The respondents 1 and 2 herein have filed a suit for

a. declaration that the shares pledged by the first plaintiff and belonging to the second plaintiff stand discharged as security

b. mandatory injunction directing the defendant to hand over the shares listed in Annexure to the plaint to the plaintiffs and

c. direction to the defendant to pay the plaintiffs the costs of the suit.

3. The case of the respondents/plaintiffs is as follows:

a. The first plaintiff is a company engaged in the manufacture of ceramic tiles and the second plaintiff is an investment company and interalia holds shares in the first plaintiff. The defendant is, amongst other things, engaged in the business of providing finance by way of Bill Discounting facilities to large industries. In the course of its business, the first plaintiff discounted with the defendant, two Bills of Exchange, both dated 27.11.1996, drawn by Neycer India Limited and accepted by the first plaintiff for Rs.55,33,500/- and Rs.56,04,900/- respectively. The plaintiffs, at the request of the defendant and in order to secure the amounts under the said Bills, pledged with the defendant 11,10,380 Equity Shares of Rs.10/- each of the first plaintiff and standing in the name of the second plaintiff. The first plaintiff was making several payments towards the amounts due under the Bills and thus, two Bills were fully paid and discharged by the first plaintiff and no amount remained due in respect of the same. As per the statement of account, since an excess amount of Rs.21,24,560/- was made by the first plaintiff to the defendant, the plaintiff was entitled to recover such amount from the defendant and thus, the defendant became bound and liable to endorse such payments on the bills and also to release and return the pledged shares to the plaintiffs since such shares have been pledged solely for the purpose of securing the amounts due in respect of such Bills.

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b. While so, the plaintiffs received a notice from Bank of Tokyo-Mitsubishi Ltd., the appellant in the present appeals, on 08.09.1997 wherein the appellant herein purported to state that the said two Bills which had been discounted by the defendant, had been negotiated by the defendant in favour of the said Bank on 25.02.1997 and the said Bank called upon the first plaintiff to make immediate payment in respect of the said Bills with overdue interest. The first plaintiff, therefore, explained to the Bank the position with regard to discharge of bills by forwarding a statement of account and also made a reference to the Share Certificate which had been pledged by the plaintiff with the defendant and the defendant was called upon to handover such Share Certificate to the plaintiff in view of the fact that no amount was pending under the relevant Bills. Thus, the defendant has acted fraudulently in the matter after receiving payments in respect of the above said two Bills, thereby unjustly enriching themselves. In the meanwhile, the plaintiffs have also pledged valuable security in the form shares in the first plaintiff's company in the name of the second plaintiff for due payment of the above said Bills.

4. Along with the suit, the respondents/plaintiffs had also filed O.A. No.630 of 1999 for interim injunction restraining the third respondent herein from dealing with their shares in any manner. Since the third respondent herein filed a counter in O.A. No.630 of 1999 stating that the subject shares have been given as commercial security to the appellants herein, the respondents/plaintiffs, with a view to ascertain the truth regarding the fate of their shares, filed Application No.279 of 2000 seeking to implead the appellant in the present appeals as second defendant in the suit and the said application was allowed by a learned Single of this Court on 27.03.2000 and accordingly, the appellant in the present appeals was impleaded as second defendant in the suit.

5. Further, the respondents 1 & 2 herein who are the plaintiffs have filed two applications, one in O.A. No.42 of 2000 seeking an order of interim injunction restraining the appellant bank herein, its agents, servants or anyone claiming under or through them, in any manner dealing with the shares listed in the Schedule thereto, pending disposal of the suit and another in Application No.280 of 2000, seeking a direction to the appellant bank herein to deposit the original share certificate in respect of shares listed in the Schedule to the Judge's summons together with corresponding Transfer Deeds into this Court.

6. The third respondent herein who is the first defendant in the suit, filed counter and contended that Bill of Exchange is a negotiable instrument which is endorseable and freely transferable and as such, it

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was transferred and endorsed in the name of the second defendant i.e. the appellant herein and the shares were given as security to the second defendant. It is the further case of the third respondent herein that the plaintiffs were chronic defaulters and they neither paid the entire amounts advanced under Bills of Exchange nor paid any overdue charges and as such, it has every right to give the shares of the plaintiffs as security to the second defendant especially when Section 178 of the Contract Act entitles the pawnee to hold the security till entire amount is paid or to sell the security and adjust the amount. It is also the case of the third respondent herein that the plaintiffs have given Power of Attorney to it and as such, they have no right under law to get back the shares until the entire amount due on the bills is settled with overdue charges.

7. The learned Single Judge of this Court, while taking up Application No.42 of 2000 on 20.07.2001, passed orders and the relevant portion reads as under:

> "4. It appears that the shares are standing in the name of the second plaintiff. The shares were not transferred. Therefore, prima facie, it belongs to the second plaintiff. Admittedly, this has been given as security by the first respondent. The first respondent without any authority handed it over to the second respondent. Therefore, the plaintiffs have right for an interim injunction against the second defendant also not to deal with the shares, pending disposal of the suit."

8. Similarly, the learned Judge took up Application No.280 of 2000 and passed orders on 20.07.2001 and the relevant portion reads as under:

> "2. Counsel for the second respondent says in the open court that the shares have been handed over to the Debt Recovery Tribunal, Chennai in 1999. Where there was an order of this Court not to deal with the shares, the second respondent had the duty to keep it with them. Therefore, the second respondent is directed to deposit the original share certificates in this Court, within two weeks from this date, failing which proceedings under the contempt of court shall be initiated."

9. The above orders of the learned Single Judge are under challenge in the present Appeals.

10. Heard Mr. C. Mohan, learned counsel appearing for the appellant in both the appeals and Mr. R. Murari, learned counsel appearing for respondents 1 and 2 in both the appeals.

11. Mr. C. Mohan, leaned counsel for the appellant has contended that the learned Single Judge had erred in holding that prima facie the shares belong to the respondents 1 and 2 and while holding so, the Judge

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had failed to note that the said shares were validly pledged with the appellant by Valuable Steels India Pvt. Ltd and Klen and Marshals Manufacturers & Exporters Pvt. Ltd. as security for the discounting of bills. He has further contended that the learned Single Judge has grossly erred in observing that the respondents 1 and 2 have a right for interim injunction against this appellant not to deal with the shares and the order in the application is even otherwise in excess of jurisdiction and the respondents 1 and 2 have not even made out a prima facie case against this appellant. While pointing out the over-riding power of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 over the common law, the counsel for the appellant has relied on a decision of the Supreme Court reported in (2000) 4 SCC 406 in the matter of Allahabad Bank vs. Canara Bank & another. Finally, it is the contention of the counsel for the appellant that the learned Single Judge, while passing orders in the interim applications, has granted the main relief itself which is sought in the suit and thus, the interim orders suffer from legal infirmity and as such, cannot be sustained. In support of this contention of his, he has relied on a recent decision of the Supreme Court reported in (2007) 1 SCC 257 in the matter of State of U.P. & others vs. Desh Raj.

12. Per contra, Mr. Murari, learned counsel for respondents 1 and 2 has contended that the shares lodged with the third respondent are valuable properties belonging to the second respondent and the entire lodgment of shares with the appellant is invalid. He has further contended that the appellant has nothing to do with the respondents 1 and 2 as the dealings are between the respondents 1 and 2 and the third respondent who is the first defendant in the suit.

13. From a perusal of paragraphs 4 and 2 of the orders of the learned Single Judge made in O.A. Nos.42 and 280 of 2000 which have already been extracted in paragraphs 7 and 8 respectively of this judgment, it is seen that the said orders tantamount to grant of main relief sought in the suit itself. In that view of the matter, the question arising for consideration before us is whether the orders passed in the applications are prima facie sustainable and whether there is any legal infirmity with the said orders in view of the fact that they had been passed at the interim stage. From such a point of view, it would be useful to refer to:

a. the judgment of the Allahabad High Court reported in AIR 2004 Allahabad 105 in the matter of Vashisht Kumar Jaiswal vs. State of U.P. & others: (para 17)

> "In view of the above, it is evident that the Court should not grant interim relief which amounts to final relief and in exceptional circumstances where the Court is satisfied that ultimately the petitioner is bound to succeed and fact-situation warrants granting such a relief, the Court may grant the relief but it must record reasons for passing such an order and make it clear as to what are the special circumstances for which such a relief is being granted to a party."

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b. the Supreme Court judgment relied on by the counsel for the appellant in the matter of State of U.P. & others vs. Desh Raj reported in (2007) 1 SCC 257:(paragraph 6)

> "A bare perusal of the impugned order could show that the learned Single Judge for all intent and purport had allowed the writ petition on the very first day, which in our opinion, was not justified. It is now well settled that a relief which can be granted only at the final hearing of the matter, should not ordinarily be granted by way of an interim order. It is also doubtful as to whether the impugned directions could have been issued even at the final hearing of the matter which would amount to creation of supernumerary post in purported compliance with the Regularisation Rules."

c. the judgment of the Supreme Court reported in (2004) 7 SCC 478 in the matter of Metro Marins and another vs. Bonus Watch Co. (P) Ltd. & others: (para 9)

> ". . .As noticed by this Court, in the case of Dorab Cawasji Warden vs. Coomi Sorab Warden, it has held that an interim mandatory injunction can be granted only in exceptional cases coming within the exceptions noticed in the said judgment. In our opinion, the case of the respondent herein does not come under any one of those exceptions and even on facts, it is not such a case which calls for the issuance of an interim mandatory injunction directing the possession being handed over to the respondent. As observed by the learned Single Judge, the issue whether the plaintiff is entitled to possession is yet to be decided in the trial court and granting of any interim order directing handing over of possession would only mean decreeing the suit even before trial."

d. yet another judgment of the Supreme Court in the matter of Bharat Sanchar Nigam Limited & others vs. Prem Chand Premi and another: (para 2)

> "We are of the view that the High Court should not have granted the ultimate relief at the interim stage as the issue seems to be a highly debatable one. The question is whether the eligibility of the respondents for promotion should be decided according to the 1996 Rules, the 1999 Rules or the 2001 Rules. We accordingly allow the appeal by setting aside the interim order passed by the High Court. . ."

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14. From a reading of the above-referred catena of judgments and taking an overall view of the matter, we find that there is no such circumstance warranting the learned Single Judge to give a finding to the effect that the shares are standing in the name of the second plaintiff and were not transferred and therefore, prima facie they belong to the second plaintiff and thus, the plaintiffs have right for an interim injunction against the second defendant also not to deal with the shares, pending disposal of the suit. Similarly, there is no warranting circumstance for the learned Single Judge to direct the appellant herein to deposit the original share certificate in this Court. These reliefs granted by the learned Single Judge at the interim stage is nothing but the prayer in the suit itself which has to be considered only at the ultimate stage of final decree. We are, therefore, of the considered opinion that the learned Single Judge, without going into the legal proposition involved in this regard, has granted the main relief itself which is sought in the suit at the interim stage, which in other words, tantamounts to a pre-trial decree.

15. As for the reliance placed by the counsel for the appellant on the decision of the Supreme Court reported in (2000) 4 SCC 406, we do not deem it necessary to go into the same at this stage as the challenge is only with regard to the validity of the orders of the learned Single Judge passed in the interim applications.

16. Having regard to the facts and circumstances of the case, the discussion made above and also the various rulings cited, we are of the considered opinion that the interim orders passed by the learned Single Judge in Application Nos.42 and 280 of 2000 suffer from legal infirmity as stated above and as such, do not have legs to stand. In that view of the matter, the interim orders which are impugned in these appeals are quashed and the appeals are accordingly allowed without any order as to costs.

However, taking cognizance of the urgency involved in the matter and the submissions made by the learned counsel on either side, we feel that the suit is to be disposed of at an early date. Accordingly, the Registry is directed to list the suit for final hearing in the second week of June 2007.

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Asst.Registrar

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Sub Asst.Registrar

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To

1. The Sub Assistant Registrar
Original Side, High Court, Madras.

2. The Section Officer,
Original Side, High Court, Madras.
(the list the suit for final hearing
in the second week of June 2007)

2 cc To M/s.King & Partridge, Advocate, SR.20791, 20792.
1 cc To Mr.R.Murari, Advocate, SR.20920.

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JRG(CO)
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